IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO: 28998 of 1998

Between:

Y.Raghava Rao, S/o. Nageswara Rao,
Since Retired Under V.R.S. & Vice Chairman of Bharat Mercantile

Co-operative Urban Bank Ltd., Hyderabad, R/o Hyderabad.

..... PETITIONER

AND

1 Syndicate Bank, Manipal. 576119 Rep.by its General Manager (p)
Staff Welfare Division, Pension Cell, H.O.Manipal.
2 The Asst.General Manager (P), Syndicate Bank,
Staff Welfare Division, Manipal 576119, Karnataka State.
3 The General Manager (P) Syndicate Bank,
Zonal Office, Hyderabad,
4 The Personnel Manager, Syndicate Bank,
H.O.Manipal 576119, Karnataka State.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pleased to call for the records connected with Proc.Ref.No.1295-SWD/FN/515/97/CE dated 31/08/1998 on the file of the Asst.General Manager(P) Syndicate Bank, Manipal, Karnataka State and quash the same as being without jurisdiction, arbitrary, un-constitutional, null and void besides being violative of the principles of natural justice by issuance of a Writ of Certiorari or any other order or direction in the like nature; and consequently direct the Respondents herein to continue to release the pension to the petitioner by declaring the action of the respondents as being contrary to Regulation No.50(6) of the Syndicate Bank

(Employees) Pension Regulations 1995.

Counsel for the Petitioner: MR.Y.VENKAT SASTRY

Counsel for the Respondents: MR.A.KRISHNAM RAJU

The Court made the following:

ORDER:

This writ petition is filed by the petitioner challenging the proceedings of the Assistant General Manager (P), Syndicate Bank, Manipal, Karnataka State, in his proceedings Ref.No.1295-SWD/FN/515/97/CE dated 31-08-1998 and to quash the same as arbitrary and illegal, apart from being without jurisdiction, and consequently, direct the respondents to continue to release the pension of the petitioner.

2. It is the case of the petitioner that he was an officer of the first respondent bank till 30-07-1997. He sought for permission to retire under voluntary retirement scheme on completion of statutory period of service so as to entitle him to draw up pensionary benefits. He had, by that time, put in more than 24 years of service in the bank. The petitioner sought voluntary retirement vide his letter dated 12-04-1997 with effect from 30-07-1997. The competent authority accepted his letter for voluntary retirement with effect from 30-07-1997 vide letter dated 29-07-1997, which reads as under:

> "Please note that the acceptance of notice for voluntary retirement shall not be construed as permission to take employment. In such a case, you have to apply separately to the competent authority after your relief from the services of the Bank."

After retirement, certain professionals with adequate banking experience came together and decided to promote new Urban Bank under the Cooperative Societies Act, 1954. After completing all the formalities and establishing necessary infrastructure, the said group was in search of a competent hand, who could work on a voluntary basis without any remuneration in view of the

R.B.I. directive, vide letter dated 21-02-1997. Since the petitioner retired from service in the first respondent bank under voluntary retirement scheme, he was approached by the promoters of Bharat Mercantile Cooperative Urban Bank Limited, Panjagutta, Hyderabad, and he offered his services to be associated with that bank, without any remuneration what so ever as he was a share holder of the bank. The Board of Directors of the bank considered the offer made by the petitioner and nominated him as Director/2nd Vice-Chairman and he was elected as a Director of the said bank. His election as a Director of the Bharat Mercantile Cooperative Urban Bank Limited does not come within the definition of "Employment", since he did not draw salary nor he was treated as an employee of the bank. He sent a letter dated 04-12-1997 giving all the details and sought for permission, if any required, to function as Director and Vice Chairman of the Bharat Mercantile Cooperative Urban Bank Limited, Hyderabad. On such letter sent by the petitioner on 04-12-1997, the Personal Manager of the first respondent bank misconstrued the same as if the petitioner was seeking permission for taking up employment after voluntary retirement, and informed the petitioner vide letter dated 23-12-1997 that the application has to be forwarded to the first respondent through the Zonal Office, Hyderabad. It was misconstrued by the bank that the petitioner's status as Director and Vice Chairman of the bank as one of commercial employment with the said bank. On 12-01-1998, the petitioner sent another letter reiterating that he was not taking any commercial employment in M/s. Bharat Mercantile Cooperative Urban Bank Limited, but he was offered the post of Vice Chairman in assisting the Chairman in formulation of bank's policies. There was no remuneration as such, except the honorarium of Rs.250/- towards Board sitting fees. The 4th respondent, thereafter, issued a letter dated 02-03-1998 harping on the same point that he was requesting to consider his case for employment in Bharat Mercantile Cooperative Urban Bank Limited, and calling upon him to send a copy of the resolution of the General Body Meeting etc., to place the matter before the competent authority. Thereupon, the petitioner sent all the required material vide his letter dated 02-06-1998 reiterating his request for permission to be inducted as a Vice Chairman on the Board of Directors of M/s. Bharat Mercantile Cooperative Urban Bank Limited, Hyderabad. While he was looking forward for favourable order, shockingly he received the proceedings in

Ref.No.2634/SWD/PN/515/97/CE dated 16-07-1998 of the first respondent unilaterally rejecting the case of the petitioner stating that:

> "In this connection we wish to inform you that as per definition of commercial employment, the post of a Vice Chairman is a full time job which require prior permission of the bank. Since you have already taken up the employment with Bharat Mercantile Cooperative Urban Bank Limited, without prior permission of the Bank, please let us know why your monthly pension should not be withheld from the date of joining Bharat Mercantile Cooperative Urban Bank Limited, till such period that is to be decided by the competent authority.
>
> Please also let us know the date on which you had taken up employment with the said Bank."

Hence, this writ petition.

3. A detailed counter-affidavit has been filed by the respondents denying the allegations made by the petitioner.

4. It is the contention of the learned counsel for the petitioner that Regulation 50 of the Syndicate Bank (Employees) Pension Regulations, 1995 (for brevity 'the Regulations') contemplates obtaining commercial employment after voluntary retirement. The word 'commercial employment' is not defined anywhere. Though the petitioner furnished all the details, the same was not considered as required under regulation 50 of the Regulations, especially, sub-regulation 6 read with sub-regulation 8 of regulation 50 of the Regulations. Firstly, the respondents have no jurisdiction to pass such an order. Apart from that, no notice of any kind was issued before passing the impugned proceedings and thereby violated the principles of natural justice.

5. Per contra, the learned counsel for the respondents contended that the petitioner whether he is working on honorarium or on a regular salary, as per the explanation to sub-regulation 8 of regulation 50 of the Regulations, every

employment whether taken up on honorarium basis or otherwise, is a commercial employment. Therefore, the petitioner cannot escape from the clutches of law having retired from the bank under the Regulations. Since the Regulations does not permit the petitioner obtaining the commercial employment within 24 months from the date of retirement, there is nothing wrong in passing the impugned proceedings and the same is in accordance with law.

6. I have given earnest consideration to the submissions made by the learned counsel on either side and also looked into the material placed on record.

7. Admittedly, the word 'commercial employment' is not defined anywhere. Sub-regulation 8 of regulation 50 of the Regulations tries to explain the expression 'commercial employment' as under:

> "(8) In this regulation, the expression 'commercial employment' means—
>
> i. an employment in any capacity including that of an agent, under a company (including a banking company), cooperative society, firm or individual engaged in trading, commercial, industrial, financial or professional business and includes also a directorship of such company (including a banking company) and partnership of such firm, but does not include employment under a body corporate, wholly or substantially owned or controlled by the Central Government or a State Government;
>
> ii. setting up practice, either independently or as a partner of a firm, as adviser or consultant in matters in respect of which the pensioner-
>
> A. has no professional qualifications and the matters in respect of which the practice is to be set up or is carried on are relatable to his official knowledge or experience, or
>
> B. has professional qualifications but the matters in respect of which such practice is to be set up

are such as are likely to give his clients an unfair advantage by reason of his previous official position; or

C. has to undertake work involving liaison or contact with the offices or officers of the Bank.

Explanation:- For the purpose of this clause, the expression "employment under a cooperative society" includes the holding of any office, whether elective or otherwise, such as that of President, Chairman, Manager, Secretary, Treasurer and the like, by whatever name called in such society."

8. Admittedly, the petitioner by his letter dated 04-12-1997 giving all the details with respect to his nomination as Director/2nd Vice Chairman on honorary basis sought for permission, if any required, to function as Director and Vice Chairman on the Board of Bharat Mercantile Cooperative Urban Bank Limited, Hyderabad. This was an intimation cum permission sought by the petitioner. When the petitioner was asked further information, he supplied the said information in the prescribed form as required by the respondent bank. It was stated by the petitioner that he was not taking any commercial employment in M/s. Bharat Mercantile Cooperative Urban Bank Limited, Hyderabad, but he was offered the post of Vice Chairman in assisting the Chairman in formulation of the Bank's policies, and there was no remuneration as such, except the honorarium of Rs.250/- towards Board sitting fees.

9. The sub-regulation 6 of regulation 50 of the Regulations reads as under:

"If any pensioner takes up any commercial employment at any time before the expiry of two years from the date of his retirement without the prior permission of the Bank or commits a breach of any condition subject to such permission to take up any commercial employment has been granted to him under this regulation, it shall be competent for the Bank to declare by order in writing and for reasons to be recorded therein that he shall not be entitled to the whole or such part of the pension and for such periods as may be

specified in the order;

Provided that no such order shall be made without giving the pensioner concerned an opportunity to show cause against such declaration;

Provided further that in making any order under this sub-regulation, the Bank shall have regard to the following factors, namely:-

i. the financial circumstances of the pensioner concerned;

ii. the nature of, and the emoluments from, the commercial employment taken up by the pensioner concerned; and

iii. any other relevant factor."

The above regulation contemplates that the bank shall have regard to the factors such as financial circumstances of the pensioner, the nature of emoluments from the commercial employment taken up by the pensioner concerned and other relevant factors. Of course, this exercise is taken up only when the petitioner/pensioner takes up any commercial employment at any time before the expiry of two years from the date of his retirement without the prior permission of the Bank or commits a breach of any condition, subject to such permission to take up any commercial employment has been granted to him under the Regulation. The above regulation categorically contemplates consideration of the emoluments received from the commercial employment taken up by the pensioner concerned.

10. Admittedly, though all the details as sought for by the respondent bank were submitted by the petitioner, the impugned proceedings were issued stating as follows:

"as per Regulation 50 (8) (1) of Syndicate Bank Employees' Pension Regulations 1995, the post of Chairman and Vice-Chairman are considered as commercial employment which require prior permission of the Bank. The matter was placed before the Competent Authority. Since the explanation given by you is not satisfactory, it is ordered to stop you monthly pension from the date

of your induction as Vice-Chairman of Bharat Mercantile Cooperative Urban Bank Ltd., till the expiry of 24 months from the date of your voluntary retirement from our service i.e., from 24-11-1997 to 30-07-1999 for the violation of Regulation 50 of Syndicate Bank (Employees') Pension Regulation, 1995."

From the above, it is not clear as to on what basis the respondent came to the conclusion that the induction of the petitioner as a Vice-Chairman of Bharat Mercantile Cooperative Urban Bank Ltd., as a 'commercial employment' and contrary to regulation 50 (8) (1) of the Regulations, except saying that the explanation given by the petitioner is not satisfactory. In fact, the sub-regulation 6 of regulation 50 of the Regulations contemplates consideration of the nature of employment undertaking, the emoluments received by the petitioner in the said post of Vice-Chairman/Director of the honorary post held by him and other relevant factors including the antecedents of the bank for which he was nominated as such. The question of antecedents in this case may not arise for the reason that the Bharat Mercantile Cooperative Urban Bank Ltd., was a newly formulated bank. The question of transactions being held by that bank with the respondent bank also does not arise. Further, as an officer of the respondent bank, before his voluntary retirement, the question of the petitioner having any transactions with that bank also does not arise. Ultimately, the respondent bank is supposed to say what is the prejudice caused to it and how its interest is affected. Firstly, this is not a commercial employment taken up by the petitioner and the impugned order is not passed after considering the entire material placed before it. This is an admitted fact that the petitioner retired from the service of the bank on voluntary basis with effect from 30-07-1997. I am of the considered opinion that the impugned proceedings does not furnish any reasons as required under law. Therefore, the same is liable to be set aside and accordingly set aside.

11. The writ petition is accordingly allowed. No order as to costs.

C.V.RAMULU, J

22nd June, 2005

SKM

Copy to:

1 The General Manager (P), Syndicate Bank, Manipal.

576119, Staff Welfare Division, Pension Cell, H.O.Manipal.
2 The Asst.General Manager (P), Syndicate Bank,
Staff Welfare Division, Manipal 576119, Karnataka State.
3 The General Manager (P) Syndicate Bank,
Zonal Office, Hyderabad,
4 The Personnel Manager, Syndicate Bank,
H.O.Manipal 576119, Karnataka State.

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